

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 DUKE BOLTER,

4 No. C 09-04587 CW (PR)

5 Plaintiff,

6 v.

7 FRANCISCO JACQUES, et al.,

8 Defendants.

9 _____/

10 ORDER GRANTING PLAINTIFF AN
11 EXTENSION OF TIME TO PROVIDE
12 COURT WITH PROOF OF SERVICE
13 UPON DEFENDANTS; DENYING HIS
14 APPLICATION TO PROCEED IN FORMA
15 PAUPERIS; AND DENYING HIS
16 MOTION FOR SERVICE OF THE
17 AMENDED COMPLAINT BY THE U.S.
18 MARSHALL

19 Plaintiff, a state prisoner, filed the present pro se prisoner
20 action under 42 U.S.C. § 1983.

21 On May 3, 2010, he filed a first amended complaint.

22 Plaintiff paid the full filing fee in this action; therefore,
23 the Court reviewed his first amended complaint under § 1915A, and
24 not the provisions of the in forma pauperis statute (28 U.S.C.
25 § 1915(e)). In an Order dated June 1, 2010, the Court issued its
26 Order finding certain claims cognizable, dismissing other claims
27 with leave to amend, and directing Plaintiff to provide the Court
28 with proof of service of the summons and first amended complaint
upon Defendants Weningham, Sayre, McLean, Risenhoover and Flowers.
He was also informed that the failure to do so shall result in the
dismissal of all claims against these Defendants.

In an Order dated October 8, 2010, the Court granted Plaintiff
an extension of time to provide the Court with proof of service of
the summons and first amended complaint upon Defendants Weningham,
Sayre, McLean, Risenhoover and Flowers.

1 Before the Court is Plaintiff's second motion for an extension
2 of time to provide the Court with proof of service of the summons
3 and first amended complaint upon Defendants Weningham, Sayre,
4 McLean, Risenhoover and Flowers. Also before the Court are
5 Plaintiff's motion for leave to proceed in forma pauperis and his
6 "Motion Requesting Court Order [the] United States Marshal to Serve
7 Amended Complaint/Waiver Forms on All Defendants." Having read and
8 considered Plaintiff's requests, and good cause appearing,

9 IT IS HEREBY ORDERED that the Court GRANTS Plaintiff's request
10 for an extension of time to provide the Court with proof of service
11 of the summons and first amended complaint upon Defendants
12 Weningham, Sayre, McLean, Risenhoover and Flowers (docket no. 21),
13 and that the time to do so will be extended up to and including
14 sixty (60) days from the date of this Order. Failure to do so by
15 the new deadline shall result in the dismissal of all claims
16 against these Defendants.

17 As mentioned above, Plaintiff has paid the requisite filing
18 fee; however, he moves to proceed in forma pauperis under 28 U.S.C.
19 § 1915 as to all other aspects of this case. The trust account
20 materials indicate that Petitioner had an average monthly balance
21 of \$962.14 in his trust account. His balance on July 27, 2010 was
22 \$820.83. This is sufficient to cover the costs associated with
23 service of the summons and first amended complaint upon Defendants
24 Weningham, Sayre, McLean, Risenhoover and Flowers. Alternatively,
25 Plaintiff may proceed with a request for waiver of service of
26 summons or with arranging for payment to the Marshal to serve
27 summons, as explained in the Court's earlier orders.

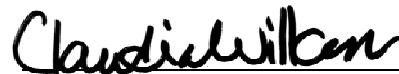
28

1 Accordingly, Plaintiff's application to proceed in forma
2 pauperis under 28 U.S.C. § 1915 as to all other aspects of this
3 case (docket no. 17) is DENIED. Therefore, Plaintiff's "Motion
4 Requesting Court Order [the] United States Marshal to Serve Amended
5 Complaint/Waiver Forms on All Defendants" (docket no. 22) is also
6 DENIED.

7 This Order terminates Docket nos. 17, 21 and 22.

8 IT IS SO ORDERED.

9 Dated: 1/25/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DUKE BOLTER,

Plaintiff,

Case Number: CV09-04587 CW

V.

FRANCISCO JACQUES et al.

Defendant.

CERTIFICATE OF SERVICE

7 FRANCISCO JACQUES et al,
8 Defendant.
_____ /

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on January 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

13

14

15 Duke Bolter E-13662
Pelican Bay State Prison
16 P.O. Box 7500
D-2 #108
17 Crescent City, CA 95532

18 | Dated: January 25, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk